



# Local Boundary Commission

*Darroll Hargraves, Chairperson*

*Kathleen Wasserman, Vice-Chairperson, First Judicial District*

*Nancy Cannington, Member, Second Judicial District*

*Kevin Waring, Member, Third Judicial District*

*William Walters, Member, Fourth Judicial District*

# Statement of Decision

**In the Matter of the Reconsideration of  
aspects of incorporation of the second-  
class City of Pilot Point**

## Section I - Introduction and Background

On April 14, 1995, the Alaska Supreme Court ruled that the proceedings regarding incorporation of the second class City of Pilot Point had been deficient.<sup>1</sup> The Court determined that the Local Boundary Commission had not adequately considered whether municipal services sought by Pilot Point residents could be reasonably and practicably provided by the Lake and Peninsula Borough rather than the City of Pilot Point as required by AS 29.05.021(b). The Court ordered the LBC to reconsider incorporation in the specific context of that statute.

## Section II - Reconsideration Proceedings

**Public Notice of Reconsideration.** The reconsideration proceedings began with publication, posting and mailing of public notice of the proposal. Notice of the reconsideration was published and posted in the City of Pilot Point from May 15, 1995 until June 12, 1995. The notice of reconsideration was posted in the following locations:

Pilot Point U.S. Post Office  
Pilot Point Community Hall  
Pilot Point Trading Post  
Pilot Point Maintenance Utility Building  
Pilot Point Electric Utility Building  
Pilot Point Generator Building

**Mailing of Notice.** The notice was also mailed to 87 potentially interested parties and news media. Interested parties were given until July 14, 1995, to file responsive briefs and informal comments.

**Publication of Notice.** DCRA arranged for publication of the notice of reconsideration as a two-column by six-inch display advertisement in the *Bristol BayTimes* on May 11, May 18 and May 25, 1995.

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<sup>1</sup> Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995)

The notice was also published in four consecutive issues of the *Alaska Administrative Journal* on May 5, 12, 19 and 26, 1995.

**Responsive Briefs and Comments.** A responsive brief opposing incorporation was filed by Concerned Citizens of Bristol Bay. Responsive briefs supporting city incorporation were filed by the Lake and Peninsula Borough and the City of Pilot Point. Letters were filed in support of the city incorporation from Gust Griechen, Jr., Gust Griechen III, Harold G. Griechen, Egegik Mayor Richard G. Deigh, Jane M. Griechen, Bobby Jo Kramer and James Shanigan. Copies of the briefs and letters were provided to the three respondents. The materials were made available for public review at the Pilot Point City Hall, Lake and Peninsula Borough Offices, and DCRA's office in Dillingham. The deadline for submission of reply briefs and comments was August 18, 1995.

**Reply Briefs and Comments.** On August 10, 1995, the Lake and Peninsula Borough filed a seven-page reply brief regarding the reconsideration. The Borough's reply brief was directed at the responsive brief opposing incorporation filed by CCBB. Reply briefs were also submitted by CCBB and the City of Pilot Point. In addition, letters were received from Jack Keane, Douglas A. Stokes, Elaine Holmes and Scott Stevenson.

**DCRA Provisional Report.** On June 27, 1996, DCRA issued a 43-page provisional report concerning the reconsideration. The report recommended that the Commission affirm the incorporation of the City of Pilot Point. The full provisional report was sent to 66 individuals and organizations, including the City of Pilot Point, the Lake and Peninsula Borough, Jack Keane and the Concerned Citizens of Bristol Bay, and the members of the Local Boundary Commission. The provisional report recommended that the Commission reaffirm incorporation. The deadline for submission of written comments concerning the document was August 30, 1996.

Four timely letters commenting upon DCRA's provisional report were received. The letters from the individuals listed below collectively comprised nine pages.

- Walt Wrede, Lake & Peninsula Borough Manager (five pages, dated August 22, 1996);
- Andrew Hemenway, attorney for CCBB (two pages, dated August 30, 1996);
- the City of Pilot Point (one-page, dated August 30, 1996);
- Dave McClure, Bristol Bay Housing Authority (one-page, dated August 22, 1996).

**Notice of Public Hearing.** The Local Boundary Commission scheduled a public hearing on the incorporation proposal to begin at 12:00 p.m., April 12, 1997 at the Pilot Point City Hall.

- A copy of the notice was mailed on February 24, 1997 to 93 individuals and organizations.
- Publication of the hearing notice as a 2-column by 6-inch display advertisement in *Bristol BayTimes* on February 27, 1997, March 6, 1997, and March 13, 1997.
- Publication of the notice four times in the *Alaska Administrative Journal*.
- Arrangements were made with a City of Pilot Point official to post the hearing notice at a minimum of 3 public and prominent locations within the boundaries of the City.
- On February 20, 1997, radio stations serving the Pilot Point and the Lake and Peninsula Borough areas (KAKN-FM and KDLG-AM) were provided with a public service announcement providing notice of the hearing and were requested to broadcast the hearing notice until noon, April 12, 1997 in accordance with 19 AAC 10.550(c).

On February 25, 1997, notice of the public hearing was posted at the Pilot Point U.S. Post Office, Pilot Point City Office, and the Pilot Point Trading Company. The notices remained posted until the public hearing.

**DCRA Final Report.** On March 18, 1997, the final DCRA staff report concerning reconsideration of aspects of the incorporation of the City of Pilot Point was mailed to 83 interested parties. The final report recommended that the LBC conclude that it is neither reasonable nor practicable for the Lake and Peninsula Borough to provide areawide, non-areawide or service area services commensurate with those offered by the City of Pilot. The report further recommended that the LBC reaffirm the incorporation of the City of Pilot Point.

**Local Boundary Commission Public Hearing.** On April 12, 1997, the Commission conducted a public hearing on the proposal at the Pilot Point City Hall. All five members of the Commission participated in the hearing.

The hearing was attended by more than 40 individuals in Pilot Point. Three interested parties participated via teleconference from the Anchorage office of DCRA. The hearing lasted more than three hours.

**Local Boundary Commission Decisional Meeting.** At the conclusion of the public hearing, the Commission conducted a decisional session regarding the reconsideration. At its decisional session, the Commission unanimously voted to affirm the 1991 incorporation of the City.

**Section III - Findings and Conclusions**

Based on the evidence in the record of this proceeding, the LBC hereby makes the findings and conclusions set out in this section. Said record includes the following materials:

Alaska Supreme Court Opinion 4187 Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995)

**RESPONSIVE BRIEFS AND LETTERS**

BRIEFS	DATE
Concerned Citizens of Bristol Bay	July 14, 1995, 12 pages
Lake and Peninsula Borough	July 12, 1995, 8 pages, plus attachments
City of Pilot Point	July 12, 1995, 9 pages, plus attachments
LETTERS	DATE
Gust Griechen, Jr.,	July 3, 1995, 2 pages
Gust Griechen III	July 10, 1995, 2 pages
Harold G. Griechen	July 10, 1995, 2 pages
Egegik Mayor Richard G. Deigh	July 7, 1995, 8 pages
Jane M. Griechen,	July 3, 1995, 2 pages
Bobby Jo Kramer	June 30, 1995, 2 pages
James Shanigan	June 29, 1995, 2 pages

**REPLY BRIEFS AND LETTERS**

BRIEFS	DATE
Lake and Peninsula Borough	August 11, 1995 7 pages, plus attachments
Concerned Citizens of Bristol Bay	August 18, 1995 17 pages
City of Pilot Point	August 18, 1995 16 pages
LETTERS	DATE
Jack Keane	August 17, 1995 5 pages
Douglas A. Stokes	August 17, 1995 2 pages
Elaine Holmes	August 15, 1995 2 pages
Scott Stevenson	August 12, 1995 1 page

	DATE
<i>Provisional Report to the Local Boundary Commission Regarding Reconsideration of Legal Limits for Incorporation of the City of Pilot Point</i>	June 27, 1996

**LETTERS REGARDING DCRA PROVISIONAL REPORT**

	DATE
City of Pilot Point (Gust Griechen III)	August 30, 1996
Andrew Hemenway	August 30, 1996
Lake and Peninsula Borough (Walt Wrede)	August 26, 1996
Bristol Bay Housing Authority (Dave McClure)	August 23, 1996

<i>DCRA Final Report</i>	March 18, 1997
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**OTHER MATERIALS**

- Andrew Hemenway’s January 3, 1996 Letter and Supplemental Materials
- a) Alaska Municipal League and Governor’s Office of Management and Budget Task Force on Governmental Roles, Final Report.

- b) Lake and Peninsula Borough Public Hearing Draft Comprehensive Plan
- c) Katzeek and Associates, *A Management Report on Second Class Municipalities*
- d) Northwest Arctic Borough, *Options for Our Cities: Municipal Governments or Tribal Councils, A Look at Options for the Northwest Arctic Borough*

### **Section III - Findings and Conclusions**

Based on the evidence in the record of this proceeding, the LBC hereby makes the findings and conclusions set out in this section.

The Alaska Supreme Court ordered specific examination of the narrow question of whether, pursuant to AS 29.05.021(b), it is reasonable and practicable for the Lake and Peninsula Borough to provide the services that are provided by the City of Pilot Point.

Extensive written information and testimony were received concerning the efficiency of expenditures and the internal politics of the City of Pilot Point. It was evident to the Commission that Concerned Citizens of Bristol Bay objected to the substantial tax revenues of the City of Pilot Point, which they view as exclusively benefiting the small population of Pilot Point. The Commission considers such issues to be peripheral to the narrow issue that was before the Commission as directed by the Alaska Supreme Court on remand.

Concern about taxes is an issue confronted by many municipalities in Alaska, as local governments struggle to cope with declining shared revenues from the State and federal governments. Disenchantment on the part of Concerned Citizens of Bristol Bay with the City of Pilot Point's tax levy is similar to sentiments being increasingly expressed by other local taxpayers throughout Alaska. Municipalities are increasingly compelled to rely on locally generated revenues to provide municipal services. It is appropriate for the City to tax the only abundant local resource to fund provision of municipal services.

Disincorporation of the City of Pilot Point, which would presumably result from a finding by the Commission that the Lake and Peninsula Borough could reasonably and practicably provide the services in question, would have broader implications. Disruption of the framework of municipal government in the Lake and Peninsula Borough could run counter to the general best interests of the State. At the April 12, 1997 public hearing, Pilot Point residents persuasively testified that local taxes provide money essential for the continued functioning of the City of Pilot Point and viability of the community. Declining local participation in the Bristol Bay commercial fishery and reductions in entitlement programs provided motivation for incorporation of the City of Pilot Point.

The record and testimony provided substantial evidence to support the conclusion that there is a long-standing desire and commitment on the part of Pilot Point residents to the delivery of local services. Further, significant local resources are available to provide local services to address long-standing local problems. Although Pilot Point has relatively few year-round residents, a high degree of local participation in municipal affairs is evident. Local personnel are available to support delivery of municipal services. This is noteworthy since municipal governments in other communities with limited populations often encounter difficulty attracting required numbers of residents to serve on city councils and committees and deliver municipal services. Understandably, remote communities with small populations often have a limited number of individuals who are active in community affairs.

Considerable information and testimony was provided by the Lake and Peninsula Borough and the Concerned Citizens of Bristol Bay regarding the appropriate role of the Borough in terms of delivery of local services. Lake and Peninsula Borough officials advanced the Borough Assembly's policy view that those aspects of the Borough that were most valued would be compromised if Pilot Point no longer enjoyed its own community municipal government. Such testimony was not considered by the LBC to be directly relevant to the issue on remand. The specific focus of the Commission's inquiry in this matter relates to the most appropriate structure for local service delivery in Pilot Point, not about the degree to which the Lake and Peninsula Borough is disposed to provide additional local services. The Commission recognized that the Lake and Peninsula Borough's encouragement of local

community efforts and community level decision making had contributed to the popular support enjoyed by the Borough. However, the Commission stressed that the policy choice of the Lake and Peninsula Borough to not provide additional local municipal services either areawide, non-areawide or through a service area was not a major factor in the Commission's reconsideration. The Commission's determination regarding approval, denial or amendment of a petition was not governed or influenced by parochial political considerations or Borough policies regarding service provision.

The Commission found the testimony provided on behalf of the City of Pilot Point to be most pertinent to the issue on remand since it contributed to an understanding of the history of specific local service requirements and problems relating to:

- pollution control;
- solid waste collection and disposal;
- decline of the fishery;
- inability of local residents to fully participate in the fishery;
- periodic problems with local law enforcement.

Such information was considered particularly useful to the Commission in the context of the remand because it was site-specific and reflected a long history. It was clear to the Commission that a number of the services provided by the City address unique local problems and that it would not be reasonable or practicable for the Lake and Peninsula Borough to fulfill additional local service needs.

The reconsideration record revealed ample evidence that currently, specific services to properly address unique local problems and needs of Pilot Point residents could not realistically be provided by the Borough in lieu of the City of Pilot Point. On the basis of evidence in the record, incorporation of the City of Pilot Point was not in conflict with the limitations of AS 29.05.021(b).

Clearly, former 19 AAC 10.020(a)(2),<sup>2</sup> which relates directly to the issue at hand, supports the conclusion that the Lake and Peninsula Borough cannot reasonably or practicably provide the needed services. That regulation was in effect when the Commission approved incorporation of Pilot Point in 1991. Under that former regulation, Pilot Point is determined to be remote since Pilot Point is not connected to the Borough seat at King Salmon by the State highway system.<sup>3</sup> The Commission took into account the distances separating Pilot Point, King Salmon and other Lake and Peninsula Borough communities. Further, Pilot Point was not accessible by road from any other community or the Borough seat at King Salmon. Distance between communities, lack of road access, expense and weather considerations render it difficult to provide local services to Pilot Point from King Salmon. Consideration of the difficulties inherent in delivering services over great distances was a critical factor in the context of the Commission's deliberations.

While it might be theoretically feasible for the Borough to assume delivery of services provided by the City of Pilot Point it is not evident that it would be economically feasible or administratively prudent for the Borough to assume direct responsibility for delivery of additional local services, given the specific circumstances extant in Pilot Point.

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2 Former 19 AAC 10.020(a)(2) stated, in relevant part:

The commission will not allow the incorporation of a community located within an organized borough unless the petitioners demonstrate that the services to be exercised by the proposed city cannot be reasonably or practicably exercised by the borough on an areawide or non-areawide basis. The commission will consider the requirement of this subsection satisfied if the commission determines that the municipal services proposed by the new city could more economically and efficiently be provided by the city form of government than by the exercise of areawide or non-areawide powers; or the commission determines that the proposed city is remote from the borough seat and is not connected to the borough seat by the state highway system.

3 Although King Salmon is within the Bristol Bay Borough, Lake and Peninsula Borough officials consider King Salmon to be the seat of the LPB.

The Commission examined the comparative fiscal resources available to the Lake and Peninsula Borough and the City of Pilot Point for providing the types and range of services that are currently being provided by the City of Pilot Point, either areawide, nonareawide or through one or more service areas. In that context, the Commission concludes that it is not demonstrably reasonable, efficient, practicable, or economic for the Borough to provide additional local services to Pilot Point through any of the available alternatives.

The Commission recognizes that its decision regarding Pilot Point's status relates to the appropriate structure for delivery of Borough and local services throughout the entire Lake and Peninsula Borough. Thus, the reasonableness and practicability of service delivery to Pilot Point was considered in both a local and broader regional context. The Commission is aware that the requirements for specific services among the seventeen communities within the Lake and Peninsula Borough vary widely. Local lifestyles and economies of the seventeen communities within the Borough vary considerably. The Borough as a whole has relatively few residents and a minimal staff. All communities within the Borough are remote and sparsely populated. Delivery of a wide range of local services tailored to address a broad range of local service requirements would clearly present a difficult challenge to the Borough. To add electric utility service, solid waste disposal, landfill facilities, public safety, docks, bulk fuel storage and distribution, sewage disposal, and pollution control services to the list of areawide services provided to seventeen communities or to the list of non-areawide services provided to eleven communities would have significant financial impacts on the Lake and Peninsula Borough. The financial implications in terms of Lake and Peninsula Borough tax policy cannot be reasonably predicted. The consequences of failure could be deleterious to the welfare of the region and to the broader interests of the State of Alaska.

The Commission considered the possibility that the Lake and Peninsula Borough could deliver additional local services to Pilot Point through the establishment of one or more service areas. The conclusion was reached that service area establishment was not a preferred option because of the wide range of local services provided by the City and in recognition that a city government offers maximum flexibility to meet local service and general local government requirements. Further, the Alaska Supreme Court formally recognized in the Pilot Point appeal that city incorporation is favored over formation of a service area. Specifically, the Court indicated that *"there is a statutory and constitutional preference for incorporation of cities over the establishment of new service areas."*

Section IV - Order

As a result of the hearing testimony and other information received during this remand, the Commission unanimously determined on April 12, 1997, that local municipal services cannot be reasonably and practicably provided by the Lake and Peninsula Borough and affirmed the incorporation of the City of Pilot Point.

APPROVED IN WRITING THIS 7th DAY OF MAY, 1997

LOCAL BOUNDARY COMMISSION

BY: \_\_\_\_\_  
Darroll Hargraves, Chairperson

ATTEST: \_\_\_\_\_  
Dan Bockhorst, Staff

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**RECONSIDERATION BY THE COMMISSION**

Within 20 days after this decision becomes final under provisions of 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analysis that support the request for reconsideration. If the Commission has taken no action on a request for reconsideration within 30 days after the decision becomes final under provisions of 19 AAC 10.570(g), the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioners or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

**JUDICIAL APPEAL**

**Judicial Appeal.** A decision of the Commission may be appealed to Superior Court. The appeal must be made in accordance with Alaska Rules of Appellate Procedure, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

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